

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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|------------------------------|---|--------------|
| GERALD BUSH | : | CIVIL ACTION |
| | : | |
| vs. | : | |
| | : | |
| CITY OF PHILADELPHIA, et al. | : | NO. 08-280 |

MEMORANDUM

ROBERT F. KELLY, Sr. J.

MAY 6, 2008

This matter was returned to this Court from the Third Circuit Court of Appeals with instructions to either issue a Certificate of Appealability or state reasons why a Certificate of Appealability should not issue.

Bush has filed a petition in this Court seeking habeas corpus relief pursuant to 28 U.S.C. § 2254. In the papers filed in this matter Mr. Bush raises claims relating to a decision of the Family Court of Philadelphia County and presents a motion to have an adoption decree revoked. He also claims that the state has failed to meet an obligation to place his children in a safe environment while in foster care. He claims that this situation constituted a deprivation of liberty under the Fourteenth Amendment. The relief Bush seeks is not available under the terms of 28 U.S.C. § 2254, as the adoption that Mr. Bush attacks is not criminal in nature. Furthermore, pursuant to the language of 28 U.S.C. § 2254, a petitioner seeking such relief must be “in custody” at the time the habeas is filed. Nothing presented in this Court by Mr. Bush indicates that he is in custody.

Therefore the request for a Certificate of Appealability is denied. Bush has failed to make a substantial showing of the denial of a Constitutional right. See 28 U.S.C. § 2253(c)(2).

I therefore enter the following Order.

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ORDER

AND NOW, this 6th day of May, 2008, the request of Gerald Bush for a Certificate of Appealability is **DENIED**.

BY THE COURT:

/s/ Robert F. Kelly
ROBERT F. KELLY
SENIOR JUDGE